DIGEST OF OTHER RECENT VIRGINIA DECISIONS.

(Syllabi prepared by M. P. Burks, State Reporter.)

MITCHELL v. COMMONWEALTH*.—Decided at Richmond, January 17, 1895.—*Harrison*, J:

1. INDICTMENT—*Several misdemeanors in one indictment.* Several misdemeanors of the same nature, and upon which the same or similar judgments may be rendered, may be united in the same indictment under separate counts.

2. INDICTMENT—*Several offences in one indictment—Election on which to proceed.* In cases of felony where several offences are charged in different counts of the indictment, if the court sees that the charges are so distinct that to try them together would confound the prisoner, or distract the attention of the jury, it will require the prosecuting attorney to elect which count he will try first, but this rule has no application to misdemeanors which are only punishable by fine and imprisonment.

3. CRIMINAL PRACTICE—*Several verdicts—Joint judgment.* Where a prisoner is found guilty on several counts of an indictment for misdemeanors, and separate fines are imposed in each by the jury, only one judgment need be entered for the aggregate of the fines and the costs.

4. INSTRUCTIONS NO PART OF RECORD—*Bill of exceptions.* Instructions given to the jury are no part of the record of a case unless made so by a bill of exceptions taken at the proper time, and hence cannot be objected to in the appellate court.

ORR v. PENNINGTON'S ADM'R.—Decided at Wytheville, June 25, 1896.—*Buchanan*, J. Absent, *Harrison*, J:

1. APPELLATE PROCEEDINGS—*Petition for appeal—Essentials of—Motion to dismiss appeal—Lapse of time.* A petition for an appeal is a pleading, and should state clearly and distinctly all the errors relied on for a reversal of the decree. Otherwise the appeal, if granted, should be dismissed. But a motion to dismiss for this cause will not be granted after the lapse of more than three years, when the right of appeal has become barred by limitation.

2. UNDUE INFLUENCE—*Laches in asserting.* A bill to set aside a deed on the ground of undue influence exercised over the grantor will not be entertained after long and unexplained delay, the death of the grantor and of the grantee in the deed, and gross laches on the part of the complainant.

3. UNDUE INFLUENCE—*What constitutes—Conveyance from parent to child in consideration of support.* The influence which will vitiate an act must amount to force and coercion, destroying free agency, and not be merely the influence of affection. The act must be obtained by this coercion, and it must appear that it was done merely for the sake of peace, so that the motive was tantamount to force or fear. A court of equity will not avoid a conveyance from a parent to a child made in consideration of the support of the parent by the child when it appears that the

*This case has only recently been directed to be reported.

parent, though weak and in failing health, is not of unsound mind, and, being aware of the consequence of his act and that it cannot be recalled, deliberately makes the conveyance.

THE VIRGINIA COAL & IRON COMPANY v. KELLEY.—Decided at Wytheville, July 2, 1896.—*Riely*, J. Absent, *Harrison*, J :

1. CO-TENANTS—*Different owners of soil and minerals—Adverse possession—Purchase of outstanding title.* Although a co-tenant cannot take advantage of any defect in the common title by purchasing an outstanding title or incumbrance, and asserting it against his companions in interest, yet the owner of the surface of the land and the owner of the minerals under it, where each holds a separate and distinct title, are neither joint tenants, nor tenants in common. They are not the owners of undivided interests in the same subject, but are owners of distinct subjects of entirely different natures. The title to the freehold of the one, either in the surface or the minerals, cannot be acquired by adverse possession of the other, and the purchase of the outstanding title by the one does not enure to the benefit of the other. In the case at bar the evidence does not support the claim of a resulting trust or a constructive trust in favor of the appellants.

2. CHANCERY JURISDICTION—*Cloud on title of one in possession of land—Void deed conveying minerals.*—The holder of the legal title to land, who is in possession, may come into a court of equity to have a cloud removed from his title. He has no adequate remedy at law. A deed which purports to convey the minerals in land, though void on its face, constitutes a cloud on the title which a court of equity, in a proper case, will remove.

COLDIRON AND OTHERS v. ASHEVILLE SHOE COMPANY AND OTHERS. Decided at Wytheville, July 9, 1896.—*Riely*, J. Absent, *Harrison*, J :

1. EVIDENCE—*Statements of assignor in absence of assignee.* Statements of the obligee of a title bond made after assignment thereof, in the absence of the assignee and prejudicial to his interest, are not competent evidence against such assignee, and cannot effect his rights.

2. CHANCERY PLEADING—*Answer responsive to bill is evidence for the defendant.* The answer of a defendant which is responsive to a bill which calls upon the defendant for an answer, and which is also responsive to special interrogatories propounded in the bill, is to be taken as true, unless overcome by the testimony of two witnesses, or one witness and corroborating circumstances, or by documentary evidence alone. The whole of such answer is to be taken as evidence for the defendant. It cannot be separated and a part accepted and the residue rejected.

3. JUDGMENTS—*Lien only on debtor's interest in land—Not a lien on an equitable estate held in trust for others.* Where statutory enactments do not interfere, a creditor can never get by his judgment more than his debtor really owns, and to this he will be confined by a court of equity. In the case at bar the judgment debtor had no interest in the lands sought to be subjected to which the lien of a judgment against him could attach. His interest was a mere equitable title held in trust for others.